

ALLTEL CORPORATION
601 Pennsylvania Avenue, N.W.
Suite 720
Washington, DC 20004
202-783-3970
202-783-3982 fax

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY



November 1, 2001

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission

9300 East Hampton Drive
Capital Heights, MD 20743

Re: 2000 Biennial Regulatory Review-
Separate Affiliate Requirement of Section 64.1903 of the Commission's Rules.
CC Docket No. 00-175/

Comments of ALLTEL Communications, Inc.

Dear Ms. Salas,

Enclosed for filing by ALLTEL Communications, Inc. ("ALLTEL") are an original and four copies of its Reply Comments in the proceeding referenced above. Should there be any questions regarding this matter, please contact the undersigned counsel.

Sincerely,

A handwritten signature in dark ink, appearing to read "David C. Bartlett".

David C. Bartlett
Assistant Vice President
Federal Regulatory Affairs
ALLTEL Communications, Inc.
601 Pennsylvania Avenue, NW
Suite 720
Washington, D.C. 20004
(202) 783-3970

cc: Qualex International

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

2000 Biennial Regulatory Review
Separate Affiliate Requirements of
Section 64.1903 of the Commission's
Rules

CC Docket No. ^{DD-}~~01~~-175

COMMENTS
OF
ALLTEL COMMUNICATIONS, INC.

ALLTEL Communications, Inc.

David C. Bartlett
Assistant Vice President
Federal Regulatory Affairs
601 Pennsylvania Ave, NW
Suite 720
Washington, D.C. 20004
(202) 783-3970

Its Attorney

November 1, 2001

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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Rules)	

**COMMENTS
OF
ALLTEL COMMUNICATIONS, INC.**

ALLTEL Communications, Inc., on behalf of its local exchange carrier affiliates (hereinafter "ALLTEL" or the "ALLTEL Companies") respectfully submits its comments in response to the Federal Communications Commission's (the "Commission") Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.¹

ALLTEL is a diversified telecommunications and information services company headquartered in Little Rock, Arkansas. ALLTEL, through its subsidiaries and corporate affiliates, largely serves small to mid-sized towns and cities where they provide a full complement of communications services and solutions, including local wireline, competitive local exchange carrier ("CLEC"), long distance, internet, cellular, paging, and advanced digital wireless services.

The ALLTEL wireline companies consist of twenty-two (22) individual incumbent local exchange carriers ("ILEC") which provide integrated

telecommunications services to approximately 2.6 million access lines in 15 states. The ALLTEL wireless operations provide service to 6.4 million customers throughout the Southeastern, Southwestern and Midwestern United States. Additionally, 1.2 million customers subscribe to ALLTEL long distance, and the company provides more than 200,000 customers with Internet access.

I. Introduction and Summary.

I must respectfully dissent...from the continued application of separate affiliate requirements for the provision of in-region interexchange service...by mid-sized LECs. My reasons are twofold. First, I continue to be uneasy with the degree to which reliance on this and similar regulatory devices is based on speculation about anticompetitive behavior...Our precedents, such as separate affiliate requirements, were rightly premised on the existence of a true monopolist and the associated risks...

My second concern rests with the extent that the Commission expresses a tendency to justify certain regulatory restrictions in the name of promoting competition. That alone, of course, may be worthy, but we are not free to do so in a manner that involves intermediate judgements that differ from those reached by congress.²

On May 18, 1999, then Commissioner Michael Powell expressed the above opinion and concern about the separate affiliate requirement. Today, the separate affiliate requirement continues to impede the independent ILEC's ability to compete in the rapidly changing telecommunications marketplace.

The separate affiliate requirement governing the provision of in-region, interexchange services by independent ILECs like ALLTEL is an unfounded and unnecessary regulation in a marketplace already saddled with costly and resource-

¹ *In the Matter of 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, Notice of Proposed Rulemaking, CC Docket No. 00-175, FCC 01-261 (released September 14, 2001) (hereinafter "NPRM" or "Notice").

² *In the Matter of Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, Second Report and Order on reconsideration and Memorandum Opinion and

draining administrative requirements. The focus of much of the Commission's activity following implementation of the Telecommunication Act of 1996 ("the 1996 Act") has been to prepare and provide a sustaining environment for competition while adapting its processes to foster less regulation and greater investment in infrastructure and advanced services. This focus is in keeping with congressional policy favoring deregulation of the telecommunications marketplace. It is ALLTEL's opinion, however, that Congress' vision of the separate affiliate requirement never encompassed the independent ILECs.

In this Notice of Proposed Rulemaking, the Commission seeks comment on whether the separate affiliate requirement for facilities-based, in-region interexchange services provided by independent ILECs is necessary regulation. The Commission hopes to determine whether or not there are existing and/or alternative safeguards that impose fewer regulatory costs on independent ILECs than a separate affiliate requirement. ALLTEL respectfully submits the following Comments advocating the revocation of the separate affiliate requirement for independent ILECs.

II. Different Classes of ILECs Require Different Levels of Safeguards.

The importance of Section 272 to this rulemaking is paramount. Section 272 explains in great detail the separate affiliate requirements that Congress required of the Bell Operating Companies (BOCs) in the Telecommunication Act of 1996 ("1996 Act"). There is no mention of requiring independent ILECs to adhere to these or any comparable separate affiliate regulation. The Notice raises a cogent point when it acknowledges that "Congress itself has recognized that different classes of LECs may require different

levels of safeguards and incentives...”³ Congress did not intend for independent ILECs to have more stringent safeguards than the BOCs. Section 272 safeguards were mandated on the BOCs to safeguard competition as the BOCs entered the long distance business. Congress did not authorize or impose any separate affiliate requirements on the independent ILECs. Was this an oversight? Clearly not; rather, ALLTEL strongly believes that the necessity for such regulatory requirements on independent ILECs was not deemed necessary by Congress.

Independent ILECs like ALLTEL serve predominantly rural areas. Compared to non-rural carriers, rural carriers generally have higher operating and equipment costs, which are attributable to lower subscriber density and smaller exchanges. They lack certain economies of scale, scope and density. Given their size, small and mid-size independent ILECs do not have the ability to harm the interexchange marketplace. Section 272, by its silence, recognizes this fact.

Public interest would be better served by reducing regulation on independent ILECs while heeding the statutory requirements established for the BOC’s in the 1996 Act. The Commission has legitimate reasons, backed by congressional intent, to maintain the separate affiliate requirement on the BOCs and remove similar requirements for independent ILECs.

III. Speculative Regulation Does Not Promote Competition And Innovation.

While the Commission may have the authority to impose the separate affiliate requirement on independent ILECs, there exists no legitimate reason in fact or policy for exercising such power. The Commission seeks comment on the separate affiliate

³ Notice at ¶ 12.

requirement's ability to deter cost misallocation, detect unlawful discrimination and prevent "price squeeze" pursuits by ILECs against rival interexchange carriers. The conceptual harms the Commission sought to address when it initially implemented the separate affiliate requirement on independent ILECs are not now, nor have they ever been palpable threats to competition. As discussed above, the Section 272 separate affiliate requirement was established to monitor the BOCs. As discussed in greater detail below, cost shifting and pricing discrimination by independent ILECs has not materialized as a competitive threat. The separate affiliate requirement has only succeeded in burdening independent ILECs with costly administrative trappings not levied upon their competition. Rural telephone companies are particularly hobbled by the separate affiliate requirement where high costs and certain economies of scale make capital scarce. This unsound regulatory device, as it currently applies to independent ILECs, does not benefit the pro-competitive policy framework that underlies the 1996 Act.

IV. Existing Regulation Coupled With Title II Regulatory Safeguards, As Enhanced By Post 1996 Changes To The Act, Provide Ample Protection From Anti-Competitive Behavior.

Adoption and implementation of Section 251(c) of the 1996 Act has opened ILEC facilities to interconnection. Interconnection, unbundling and resale requirements have offset the "bottleneck" nature of ILEC facilities. The rules associated with interconnection provisions require that access be provided by an ILEC in a non-discriminatory fashion, at a level of quality equal to that which the ILEC provides itself, its subsidiary or affiliate. These market opening mechanisms have enforcement tools already in place that monitor competition and deter anti-competitive conduct. The

existence of a separate affiliate requirement ignores these existing mechanisms and hinders efficiency. It is not necessary or advisable to continue to divert scarce resources better utilized for infrastructure maintenance and upgrade in order to propagate unnecessary regulation.

The concerns over misallocation, discrimination, and price squeeze, while substantially alleviated by the 1996 Act, are still touted as the evils the separate affiliate requirement protects against. Rates undergo detailed scrutiny at the state and federal levels. The agencies charged with these examinations are adept at detecting any improper cost allocation from the rate making side of the transaction.

Existing regulatory scrutiny of access charge and end-user rates under Title II will remain. Regulatory pricing and implementation of interconnection and unbundled network element access have been greatly enhanced by post-1996 changes in the Act. Today under Title II, regulatory maintenance of basic equal access rules, and regulatory power to review, correct and punish improper conduct all serve to remove any basis for possible price squeezes with respect to local exchange facilities. These regulatory capabilities and powers exist independent of the separate affiliate rule in issue. None of these safeguards would be adversely impacted by the requirement's revocation. In short, interexchange competition will continue to grow if the separate affiliate requirement is lifted.

V. The Separate Affiliate Requirement Encumbers Economic Efficiencies.

Effective regulatory safeguards may be necessary in a competitive marketplace once dominated by monopoly. But with existing alternatives available to the separate

affiliate requirement that provide equivalent protections backed by practiced enforcement measures, it is inefficient to maintain such superfluous safeguards to protect interexchange carriers from independent ILECs.

As a deterrent, the separate affiliate requirement, as it applies to independent ILECs, is an ineffective guardian of competition in light of the statutory provisions provided under Title II and the additional enhanced regulatory framework established by the 1996 Act. The separate affiliate requirement for independent ILECs adds nothing demonstrable to the state's or the Commission's existing powers to safeguard competition. It merely increases the costs already incurred by independent ILECs from existing regulation. The separate affiliate requirement is another example of imposing costly regulation where regulation already exists rather than allowing existing rules and market forces to regulate competition in the industry.

If the separate affiliate requirement is removed, carriers would have the ability to offer additional service packages of bundled services. These bundled services would be monitored under existing regulation, but would streamline carrier costs which could be passed through to the consumer in the form of new service offerings at lower rates. There are numerous bundling scenarios available that are currently prohibited by the separate affiliate requirement. Until the requirement is removed, fewer customers will benefit from the economic efficiencies available from these bundled services.

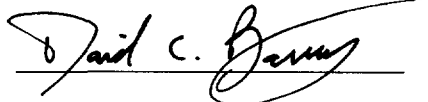
VI. Conclusion

The application of BOC separate affiliate regulation to independent ILECs on the basis of Section 272 is unwarranted, and devoid of congressional intent. Such regulation

also runs counter to Commission and congressional policy directives for deregulation. Elimination of the separate affiliate requirement for independent ILECs would not have a detrimental effect on consumers or the cost of interexchange services. On the contrary, the removal of the requirement would allow for streamlining of resources and bundling of services that would lead to increased efficiency and less costly, more diversified service for the public, without impeding competition.

Respectfully submitted,

ALLTEL Communications, Inc.

By: 

David C. Bartlett
Assistant Vice President
Federal Regulatory Affairs
601 Pennsylvania Ave, NW
Suite 720
Washington, D.C. 20004
(202) 783-3970

Its Attorney

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